

KENNETH CAIN	§	
v.	§	CIVIL ACTION NO. 5:11cv144
LONNIE SMITH, ET AL.	§	

The Plaintiff Kenneth Cain, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights during his confinement in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Cain complained of an alleged use of force which occurred on January 19, 2010. The Defendant Sgt. Lonnie Smith answered the lawsuit and filed a motion for summary judgment. This motion for summary judgment was granted, and the lawsuit dismissed, on August 20, 2013.

On September 22, 2014, over a year later, Cain filed a motion for reconsideration of the dismissal of his lawsuit. He argues that the dismissal of his lawsuit without an evidentiary hearing was an abuse of discretion and that the injuries he suffered were not *de minimis*.

The magistrate judge issued a report recommending Cain’s motion be construed as a motion for relief from judgment under Fed. R. Civ. P. 60(b) and that such motion be denied. The magistrate judge observed Cain’s motion was filed one year and three weeks after the entry of final judgment, which is not a “reasonable time” within the meaning of the Rule.

The magistrate judge further determined Cain's motion lacks merit on its face, stating there is no requirement for an evidentiary hearing in all cases and no abuse of discretion occurred when a hearing was not conducted in this case. The Court did not find Cain's injuries *de minimis*, but concluded the extent of the injuries suffered was a factor which weighed in Cain's favor. Summary judgment was granted because the uncontroverted evidence showed the force was not used maliciously or sadistically for the very purpose of causing harm, a finding which Cain did not address in his motion for reconsideration.


In his objections, Cain again refers to the injuries he suffered and alludes to the former Ruiz class action lawsuit, claiming some type of "underworld" exists at the Telford Unit. He asserts denial of his motion for reconsideration would be unconstitutional and "mean that the federal courts have no meaning."

The Court has conducted a careful *de novo* review of the pleadings in this case, including the Plaintiff's motion for reconsideration, the report of the magistrate judge, and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has concluded that the report of the magistrate judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the report of the magistrate judge (docket no. 53) is **ADOPTED** as the opinion of the district court. It is further

ORDERED that the Plaintiff's motion for reconsideration or relief from judgment (docket no. 52) is hereby **DENIED**. Fed. R. Civ. P. 60(b).

SIGNED this 12th day of January, 2015.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE